

## REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-17 were pending in the application. Claims 1, 10, and 11 have been canceled; claims 2-9 and 12-17 have been amended; and claims 18 and 19 have been added. After amending the claims as set forth above, claims 2-9 and 12-19 now are pending in this application.

Applicant presents the following remarks in response to the Office Action mailed May 19, 2005.

Claims 1-7, 9-15, and 17 are rejected under 35 USC 102 as anticipated by Tharalson et al. '211 (USP 6,578,211 B2). Claims 1, 10 and 11 have been canceled; claims 2-7 and 9 have been amended to depend from claim 8; and claims 12-15 and 17 have been amended to depend from claim 16. Applicant thus requests withdrawal of this rejection under 35 USC 102.

Claims 8 and 16 are rejected under 35 USC 103(a) as unpatentable over Tharalson et al. '211. Applicant requests withdrawal of this rejection for at least the following reason.

Claims 8 and 16, as amended, each define a child containment structure that includes, among other things, at least one ventilation panel "wherein a height of the at least one ventilation panel varies along its length, and the maximum height of the at least one ventilation panel is smaller than a minimum height of the at least one side panel."

The Office Action concedes that Tharalson et al. '211 does not disclose "a condition wherein the height of the at least one ventilation panel (570) varies along its length." The Office Action, however, states that "[i]t would have been an obvious matter of design choice . . . to provide the child containment structure of Tharalson et al. '211 with at least one ventilation panel having a height which varies along its length, since such a modification would have involved a mere change in the size of a component." Applicant disagrees. The variation in height of the ventilation panel, as recited in claims 8 and 16, involves more than a

change in the size of a component. In fact, the variation in height of the ventilation panel provides an advantage that is not recognized by the disclosure of Tharalson et al. '211 and is not achieved by the embodiments of FIGS. 1, 13, and 14 of Tharalson et al. '211 (i.e., the embodiments cited by the Office Action).

Paragraph [0027] of the present application explains this advantage of a varied-height ventilation panel in the context of a bassinet-type child containment structure:

If a child caregiver wants to raise the bassinet mattress pad 330 to help the child breathe easier, the child caregiver can adjust the pad at the end of the bassinet where the ventilation panel 324 increases in height and still preserve air flow across the upper surface of the mattress pad 330. In the raised condition, the upper surface of the mattress pad 330 can remain below the upper edge of the ventilation panel 324 so that air can pass freely between the interior and the exterior of the bassinet along the upper surface of the mattress pad 330.

Thus, a caregiver can raise the mattress pad adjacent the area where the height of the ventilation panel is increased and still preserve air flow across the mattress pad.

By comparison, the panels 570 of the enclosure 46 of FIGS. 13 and 14 of Tharalson et al. '211 are of uniform height. Thus, if a caregiver raises an end of the mattress pad of Tharalson et al. '211, the upper surface of the mattress pad would be located above the panels 570, which would result in no airflow across the mattress pad. For at least this reason, Applicant submits that providing a ventilation panel of varied height, as compared to a ventilation panel of uniform height, represents more than a change in the size of a component. Applicant thus requests withdrawal of the rejection of claims 8 and 16 under 35 USC 103(a) as unpatentable over Tharalson et al. '211.

In addition, Applicant has amended claims 2-7 and 9 to depend from claim 8 and has amended claims 12-15 and 17 to depend from claim 16. Thus, Applicant submits that these dependent claims are patentable over Tharalson et al. '211 for at least the same reason as independent claims 8 and 16.

Applicant has added new claims 18 and 19 to the application. New claim 18 defines a child containment structure "wherein the at least one ventilation panel extends from a first

end of the child containment structure to a second end of the child containment structure, and the at least one ventilation panel has a height that varies along its length and that is greater at the first end than at the second end.” New claim 19 defines a child containment structure “wherein the at least one ventilation panel has a height that varies along its length and that has a maximum height at one end of the child containment structure.” Applicant submits that new claims 18 and 19 are patentable over Tharalson et al. ‘211.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date August 19, 2005

By Mary Michelle Kile

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 672-5428  
Facsimile: (202) 672-5399

Mary Michelle Kile  
Attorney for Applicant  
Registration No. 35,217